

## Book Review

Kara W. Swanson, *Banking on the Body: The Market in Blood, Milk, and Sperm in Modern America*, Cambridge: Harvard University Press, 2014, pp. 352, \$35.00.

Reviewed By Mary Mitchell

Every year, approximately 8 million Americans provide blood to 4 million patients in need of transfusions.<sup>1</sup> In blood drives across the country, such exchanges are legally structured and commonly spoken of as gifts. But as Kara W. Swanson elegantly demonstrates in *Banking on the Body: The Market in Blood, Milk, and Sperm in Modern America*, the conceptualization of blood as a gift was not foreordained when doctors and scientists pioneered the collection and exchange of therapeutic human bodily fluids in the early 20th-century United States. In this empirically rich yet accessible history, Swanson not only offers insights into the nature of exchange, property, and capitalism in modern America, she also demonstrates the value of interdisciplinary historical work in generating new ways of engaging with legal questions.

Swanson—a lawyer, scientist, and historian of science, technology, and medicine by training—uses the perceived dichotomy between gifts and commodities to orient her reader to the history of the collection and exchange of therapeutic bodily fluids. Where donations of gifts are commonly thought to be motivated by love or altruism, market sales of commodities are perceived as being motivated by profit or greed. By tracing the shifting material practices and legal classifications of body product exchange, however, Swanson sets out to demonstrate how the dichotomy between gift and commodity is false. In modern America, she argues, body products have long been hybrids, possessing features of both gift and commodity.<sup>2</sup>

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1. Blood Centers of the Pacific, *Got Questions About Blood? / Facts About Blood and Blood Banking*, <http://www.bloodcenters.org/blood-donation/facts-about-blood-banking/> (last visited Sept. 15, 2014).
2. Here, Swanson draws upon well-established traditions in historical and social scientific studies of science, technology, and medicine, which have often focused on hybridity and modern discursive processes of separating, among other things, science and nature. For two early and influential explorations of the relationship among hybridity, modernity, and science, see DONNA J. HARAWAY, *SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE* (1991); BRUNO LATOUR, *WE HAVE NEVER BEEN MODERN* (Catherine Porter trans., Harv. U. Press 1993). It is worth noting, as Swanson acknowledges, that the gift/commodity dichotomy arises in large part from social scientific study of exchange.

*Banking on the Body* begins with the turn to living human bodies as rationally managed sources of vital medical therapeutics at the beginning of the 20th century. Tracing the emergence of the professional donor, Swanson juxtaposes the development of milk exchange practices with those of blood exchange. From 1910 forward, pediatricians such as Fritz Talbot began to devise means of standardizing and depersonalizing the provision of human milk as a part of a push for the oversight of mothering practice by medical experts. As Swanson explains, in contrast to wet nursing, physician-controlled milk stations that provided bottled milk culled from professional donors “combined medical discipline of the lactating body with medical control over the disembodied milk.” (33).

Compared with milk exchange, blood transfusion presented novel medical and technical challenges. Doctors and scientists found human blood far more variable, less universal, and more difficult to extract and preserve than milk. Swanson describes how the paid professional blood donor—often a medical student or nurse—emerged between 1900 and the 1930s as the preferred source of blood. Doctors, she explains, found these (mostly male) donors, who had been screened for blood type and syphilis and who could be called upon repeatedly for donation, to be reliable, pliable, and robust enough in their perceived masculinity to donate again and again.

After rooting the joint beginnings of milk and blood banking in Progressive Era professional donation, over the course of the next three chapters Swanson charts the growth and development of blood exchange from the 1930s through the 1970s. She turns first to the birth of the banking metaphor during the 1930s. Although doctors had found professional donors to be reliable sources of blood, problems of high cost and insufficient supply limited the availability of rapid blood transfusion for many patients in medical crisis. In response, between 1933 and 1937, Dr. Bernard Fantus, a physician at Chicago’s resource-challenged Cook County Hospital, developed a blood management system he referred to as a blood bank. Fantus’ model relied on blood-for-blood exchange to circumvent problems of payment for poorer patients, expanding access to blood transfusions. Designed for use and management by physicians, the idea was to keep each hospital department account balanced as between blood withdrawals and blood deposits while also allowing for loans and trades. Thus, while cautioning that the blood bank was not a mere metaphor, physicians designed early blood banks to provide needed therapy to the greatest number of patients.

This civic orientation toward blood provision, Swanson explains, accelerated through World War II. Dr. John Scudder’s development of blood plasma as a universal, preservable, and poolable substitute for whole blood contributed to the ability to bank and transport blood products to support

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Swanson accordingly documents both actual practices and institutions of body banking as well as social scientific conceptions about body banking taken up in various discourses. This is especially true of Chapter 4, in which she traces the effects of social scientific theorization of body products on their regulation.

wounded American soldiers. Spearheaded by the American Red Cross, which touted unpaid blood donation as a civic duty and a critical element of democratic citizenship, wartime blood drive campaigns opened up donation to a wide segment of society. To the Red Cross, however, blood banking was *only* a metaphor. "Blood was not being traded for cash, and neither was it being treated as cash; there were no deposits and withdrawals or debts in the flow of blood from home front bodies to distant battlefronts." (82).

Cold War anticommunism altered blood management in metaphor and in practice. Where Fantus had treated blood as a collective resource to be managed by the medical profession, and the Red Cross had treated blood as a gift provided as a part of democratic participation, proponents of free-standing blood banks advocated a more market-oriented view. Critics of wartime practices, such as Mrs. Bernice Hemphill, "the mother of blood banking," sought to transform blood into a free-market commodity, lambasting the Red Cross' heavily centralized model of unpaid donation as socialist planning (85). Swanson shows how, faced with renewed calls for socialized medicine and threatened by the diminution of the medical profession's control over blood supplies, the organized medical profession gradually joined free-standing blood banks to align itself at the national level against the Red Cross' gift-based model. Simultaneously, however, hospitals continued to buy and acquire blood from a variety of different sources.

Bolstered by support from the medical profession, administrators of free-standing blood banks emphasized the individual responsibility of blood recipients. As Swanson explains, "unlike Fantus, who set up accounts for each department in his hospital, the freestanding blood banks considered each patient to be an accountholder, obligated to stay out of the red by paying back his or her loan." (107). These free-standing centers leveled service charges and experimented with the provision of credit and insurance, making them much more like financial institutions than earlier hospital-based blood banks. Hemphill even went so far as to examine the structure of the Federal Reserve Bank in order to design her blood clearinghouse, which served to link blood banks in a national system.

Treating the blood bank as more than a metaphor had unintended legal consequences for doctors, hospitals, and blood banks. By the 1950s, injured blood recipients, such as those who had contracted hepatitis, began to bring lawsuits under emerging doctrines of product liability. If blood was a commodity, lawyers argued, then doctors, banks, and hospitals should be required to provide a safe and marketable product. Hospitals, banks, and doctors, in turn, retorted that blood was merely incident to the service of medical professionals and not, in itself, a product. As courts divided over whether to treat such injuries under professional or product liability rules, doctors, blood banks, and hospitals successfully lobbied for so-called blood shield laws that protected them from liability for such injuries.

Meanwhile, controversy over blood products had by the 1970s prompted social scientific and public critique of market models of blood provision.

British sociologist Richard Titmuss' 1971 book on blood donation, *The Gift Relationship*, used blood provision as a platform from which to attack American capitalism. Concurrently, public anxiety about paid donors abounded, linked to presumptions about the class, race, and disease status of persons who would sell their blood for pay. These twin backlashes against paid donation transformed the debate from one about public resources and private property to one about the virtuousness of gifts and the impropriety of commodification. The result is the regulatory framework in place to the present day, which treats most blood and all organ exchanges as unpaid gifts (196).

Swanson next turns back to milk, using changing practices of post-war milk provision to demonstrate how the banking metaphor, borrowed from blood, was applied differently and in explicitly gendered terms. In the immediate postwar period, like blood, milk exchange proceeded through banks. Unlike blood, however, these banks emphasized the shared characteristic of motherhood over distinctions between donors, who were both paid and unpaid. Where milk stations had been medically managed, milk banks grew outside of the hospital setting on a peer-to-peer model that emphasized the natural rather than the commercial nature of the banks, rooting donation in acts of maternal kindness.

By the 1970s and 1980s, informal and local "kitchen milk banks" had further separated milk donation from institutional contexts. It was not until the HIV epidemic of the later 1980s that paid donation and informal provision of milk faced challenges, leading to a proliferation of new, standardized milk banks. Although these milk banks rely on unpaid donations, some for-profit banks nonetheless sell mothers' milk for profit, further confounding the banking metaphor, borrowed from blood exchange.

Sperm banking provides Swanson's final example of how the banking metaphor ramified in different contexts. Through the 1950s, practices of artificial insemination relied on medical doctors to screen and select appropriate professional donors, choosing them for salutary personal characteristics, and then ensuring that the donor identity could never be known. Sperm banks, as such, did not exist until the 1950s. Not only did the legal system fail to accord legitimacy to children conceived to infertile married couples using donor sperm, techniques to store human sperm had yet to be perfected.

By the early 1950s, scientists experienced in cryopreservation had learned to freeze viable caches of human sperm, but opposition to artificial insemination continued. Early sperm banks accordingly accepted a man's donation as a backup measure to ensure his own fertility—it could be withdrawn only by the depositor. Later, during the 1970s and beyond, sperm banks began paying for donations and marketing gametes to women, touting their ability to provide sperm of men having particularly desirable characteristics. Thus, as compared with blood and milk, sperm has been and remains the most commodified body fluid, bought and sold at whatever price the market will bear and prized because of the donor's particular characteristics rather than for universal utility. But transfers of women's eggs, Swanson notes, further drawing out the

gendered dynamics of body banking, are treated as a paid gift at artificially low rates of compensation.

Swanson concludes with discussion connecting the history of the banking of bodily fluids to contemporary debates about body banking. Arguing that present-day American legal regimes regulating body product exchange cleave too closely to the gift/commodity dichotomy that she has shown to be false, she urges renewed attention to the malleability of property rules. Commodification is not an either/or process, she reminds by reference to the historical record. Rather, private property rules can be orchestrated to serve a range of values and pro-social objectives. Swanson sees in private property rights possibilities for solutions to vexing problems of inadequate and inequitable supply of body products to patients in need.

*Banking on the Body's* greatest contribution is the unique window it provides into exchange in modern America. Questions about the meaning of exchange have long preoccupied social theorists attempting to make sense of modernity—particularly the growth of late industrial capitalism and its reciprocal interplay with social relationships.<sup>3</sup> Swanson uses the historical development of body banking as a microcosm of exchange in modern America, offering insight into not only body products, but also America's fraught embrace of capitalism. *Banking on the Body* demonstrates the tremendous contingency, variability, and hybridity of "market" models of exchange, including the ways in which such models intersected with conceptual frameworks of race and gender. And Swanson's history is one that shows how deep ambivalence about capitalism abided even as market metaphors abounded.

In developing these insights, Swanson offers an exceptionally strong work at the junction of legal history and the history of science, technology, and medicine. Although scholars have long recognized the importance of this intersection, much historical work remains to be done.<sup>4</sup> *Banking on the Body*

3. For an intellectual history of the gift/commodity dichotomy, see HARRY LIEBERSOHN, *THE RETURN OF THE GIFT: EUROPEAN HISTORY OF A GLOBAL IDEA* (2011). This dichotomy played an important role in early theory of political economy beginning in the late 18th century, and including work by Thomas Hobbes, Karl Marx, and Adam Smith, among others. In addition, the gift/commodity dichotomy preoccupied early 20th-century social scientists such as Marcel Mauss, Franz Boas, and Bronislaw Malinowski, among others, drawing practices such as the Melanesian Kula Ring and Kwakiutl Potlatch deeply into Western social theory. See *id.* The gift remains a source of social scientific interest for its ability to illuminate practices of exchange, including exchange of body products. See, e.g., MARILYN STRATHERN, *THE GENDER OF THE GIFT: PROBLEMS WITH WOMEN AND PROBLEMS WITH SOCIETY IN MELANESIA* (1988); RENÉE C. FOX & JUDITH P. SWAZEY, *SPARE PARTS: ORGAN REPLACEMENT IN AMERICAN SOCIETY* (1992); Donna J. Haraway, *Universal Donors in a Vampire Culture: It's All in the Family: Biological Kinship Categories in the Twentieth-Century United States*, in *UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE* 321-366 (William Cronon ed., 1995); SUSAN E. LEDERER, *FLESH AND BLOOD: ORGAN TRANSPLANTATION AND BLOOD TRANSFUSION IN TWENTIETH-CENTURY AMERICA* (2008).

4. Early calls for this work often originated from the interdisciplinary field of science and technology studies (STS). See, e.g., ROGER SMITH & BRIAN WYNNE, EDs., *EXPERT EVIDENCE: INTERPRETING SCIENCE IN THE LAW* (1989), SHEILA JASANOFF, *SCIENCE AT THE BAR: LAW,*

illustrates the possibilities of this meeting point for enriching legal inquiry. Two historiographical and theoretical trends drawn from the history and sociology of science, technology, and medicine highlight the productivity of Swanson's approach to thinking about legal issues.

First, Swanson's work challenges readers to question the divisions between different kinds of knowledge and practice, to take heed of points of contact and overlap, and to mark the consequences of different classificatory schema.<sup>5</sup> Swanson's book calls into question much more than the dichotomy between gift and commodity; the entire book is an elaboration of the many ways in which law on the one hand and scientific, technical, and medical practices on the other are reciprocally constituted. But other similar lessons applicable to legal scholarship may be drawn from it. For example, when Swanson explains how aggrieved patients repurposed consumer law to seek redress for injuries from blood transfusion, she illustrates how governmental and professional regulatory schemes have complex and shifting intersections with private consumer litigation.

Second, and related, Swanson's intervention brings the richness and obduracy of the material world squarely into view, demonstrating its importance to legal regulation.<sup>6</sup> From veins that defied grafting together to sperm with a short shelf-life, Swanson repeatedly confronts the reader with the material world as doctors and scientists struggled to understand and control it. In some cases, the characteristics of body fluids and methods of extraction, exchange, and use even affected how such substances were regulated. For example, in the case of blood transfusion, the continued necessity of

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SCIENCE, AND TECHNOLOGY IN AMERICA (1995). STS is closely tied to historical inquiries in science, technology, and medicine, much as the field of law and society is tied to legal history and historiography.

5. These are well-established foci within STS and the history of science, technology, and medicine. For examples of several influential works on these topics, see Thomas F. Gieryn, *Boundary-Work and the Demarcation of Science from Non-Science: Strains and Interests in Professional Ideologies of Scientists*, 48 AM. SOC. REV. 781 (1983) (discussing the process of distinguishing science from non-science); Susan Leigh Star & James R. Griesemer, *Institutional Ecology, 'Translations' and Boundary Objects: Amateurs and Professionals in Berkeley's Museum of Vertebrate Zoology, 1907-39*, 19 SOC. STUD. OF SCI. 387 (1989) (exploring translation between fields); PETER GALISON, *IMAGE AND LOGIC: A MATERIAL CULTURE OF MICROPHYSICS* (1997) (applying the anthropological concept of trading zones to technoscientific practices and collaboration across fields); GEOFFREY C. BOWKER & SUSAN LEIGH STAR, *SORTING THINGS OUT: CLASSIFICATION AND ITS CONSEQUENCES* (1999) (exploring the importance of classification in shaping the modern world).
6. Material practices have been key foci for historical and social scientific studies of science because science, technology, and medicine are centrally concerned with understanding, representing, and controlling the natural world. Socio-legal and legal historical work, in contrast, has often neglected the law's intersection with the material world. See Alex Faulkner et al., *Introduction: Material Worlds: Intersections of Law, Science, Technology, and Society*, 39 J. L. SOC'Y 1 (2012); Christopher Tomlins, *Historicism and Materiality in Legal Theory*, in LAW, THEORY AND HISTORY: NEW ESSAYS ON A NEGLECTED DIALOGUE (Maksymilian Del Mar & Michael Lobban eds., forthcoming 2015), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2482637](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2482637).



professional medical labor in using donated blood conditioned its regulation, leading many courts to reject the analogy of blood to commodity. As scientists and doctors discover new methods of propagating and using human body tissues, the material world will continue to raise new legal questions and to play a role in conditioning their answers.

Swanson has made a tremendous contribution to the literature on body products and to 20th-century American history. *Banking on the Body* is accessible yet intricate—capable of being read on many different registers and appropriate for use in a wide variety of contexts within and outside of the classroom. Grounded in three disciplines but accessible to laypersons, rooted in extensive archival work but applicable to present-day problems, *Banking on the Body* is an example of the promise of interdisciplinary legal historical work.